Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

October Term, 1996

CITY OF DETROIT PENSION FUND and CITY OF DETROIT POLICE and FIREMAN PENSION FUND,

Petitioners,

vs.

PRUDENTIAL SECURITIES, INC.,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

SUPPLEMENTAL APPENDIX FOR PETITIONERS

ROBERT N. WAGNER
Counsel of Record
WALTER L. BAUMGARDNER
MUSILLI, BAUMGARDNER, WAGNER & PARNELL, P.C.
Attorneys for Petitioners
24000 Greater Mack Avenue
St. Clair Shores, MI 48080
(810) 778-0900

70227
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21
Lutz Appellate Services, Inc.

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT FILED JULY 31, 1996

No. 95-1078

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CITY OF DETROIT PENSION FUND; CITY OF DETROIT POLICE AND FIREMAN PENSION FUND,

Plaintiffs-Appellants,

v.

PRUDENTIAL SECURITIES INCORPORATED,

Defendant-Appellee.

ON APPEAL from the United States District Court for the Eastern District of Michigan

Decided and Filed July 31, 1996

Before: NORRIS and SUHRHEINRICH, Circuit Judges; WELLS, District Judge.*

ALAN E. NORRIS, Circuit Judge. Plaintiffs, the City of Detroit Pension Fund and the City of Detroit Police and Fireman Pension Fund (the "Funds"), appeal the judgment of the district court denying their petition to confirm an arbitration award and

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* The Honorable Lesley Brooks Wells, United States District Judge for the Northern District of Ohio, sitting by designation.

enjoining further arbitration. The Funds present two questions for review: (1) whether the district court had subject matter jurisdiction; and (2) whether the district court erred in deciding the merits of the arbitrability issue, rather than awaiting a determination by an arbitration panel. We affirm.

I. Facts

In late 1985 and early 1986, the Funds purchased from defendant Prudential Securities Incorporated ("PSI") the interests in a limited partnership costing a total of $10,000,000. While PSI and the Funds anticipated a thirty-five percent annual return on this investment, no such profit was realized. In fact, the Funds assert that they will not receive even a return of their principal when the limited partnership fully winds up its operations. On February 2, 1994, the Funds filed a Claim for Arbitration with the National Association of Securities Dealers, Inc. ("NASD"), alleging violations of (1) New York Stock Exchange Rule 405; (2) Art. III, § 2 of the NASD Rules of Fair Practice; (3) the Michigan Uniform Securities Act, Mich. Comp. Laws §§ 451.501-.817; (4) unspecified sections of the federal securities laws; and (5) the fiduciary duties imposed by the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§ 1001-1461. The Funds sought damages in excess of $11,350,000. As a member of NASD, PSI is required to arbitrate any disputes arising out of its business dealings with its customers pursuant to the NASD Code of Arbitration Procedure (the "Code").

Upon receipt of the Claim for Arbitration, NASD served PSI with a copy of the claim and informed PSI that an answer was due by April 12, 1994. PSI represents that it contacted NASD and informed the case administrator that it would be challenging in court NASD's authority to arbitrate the claims.

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PSI asserts that the case worker informed PSI that the arbitration would be put on hold pending the resolution of any litigation. PSI did not, in fact, initiate any lawsuit.

On April 28, 1994, the Funds requested a default judgment from NASD. On May 5, 1994, having heard nothing from NASD and having received no answer to its claim from PSI, the Funds commenced this action by filing a Petition for Confirmation of Award. PSI responded by pointing out that there was no arbitration award for the district court to confirm. While the Funds assumed that the failure of PSI to file an answer with NASD by the April 12 deadline would automatically result in the entry of a default judgment, the Code plainly indicates otherwise. Section 25(b)(2)(iii) indicates that the sanction available where a party fails to file a timely answer is that the party "may, in the discretion of the arbitrators, be barred from presenting any matter, arguments or defenses at the hearing." Indeed, the Code does not appear to authorize a default judgment in any case. A party seeking arbitration is not without a remedy, though, since courts routinely issue orders compelling uncooperative parties to arbitrate.

PSI also argued that, because of § 15 of the Code, the Funds' claims were not eligible for submission to NASD as they were more than six years old. The relevant portion of § 15 provides that "[n]o dispute, claim, or controversy shall be eligible for submission to arbitration under this Code where six (6) years have elapsed from the occurrence or event giving rise to the act or dispute, claim, or controversy." PSI sought a declaratory judgment that the claims were ineligible for submission to arbitration. The Funds replied that the six-year period for bringing claims was tolled by the doctrine of fraudulent concealment, which PSI parried by arguing that § 15 is not subject to tolling.

Appendix A

On December 23, 1994, the district court concluded that it was unnecessary to decide whether § 15 is subject to tolling, because the Funds had failed to allege facts that would support a finding of fraudulent concealment. The district court then granted PSI's motion to enjoin the arbitration, to dismiss the arbitration claims, and to dismiss the petition for confirmation of the arbitration award. This timely appeal follows.

II. Subject Matter Jurisdiction

Jurisdiction was not a significant issue in the district court, and it was ignored in the parties' appellate briefs. After briefing but before oral argument, the Funds notified this court that they intended to challenge the subject matter jurisdiction of the district court. Failure to object to subject matter jurisdiction before the district court does not preclude appellate review, *Nationwide Mut. Ins. Co. v Cisneros,* 52 F.3d 1351, 1361 (6th Cir. 1995), *cert. denied,* 116 S. Ct. 973 (1996); and we must address this issue even though it is presented for the first time on appeal. *Von Dunser v. Aronoff,* 915 F.2d 1071, 1074-75 (6th Cir. 1990).

This district court treated this case as a federal question dispute with jurisdiction premised upon 28 U.S.C. § 1331 and the Federal Arbitration Act, 9 U.S.C. §§ 1-16, under which the petition to confirm was filed. In light of this court's decision in *Ford v. Hamilton Investments, Inc.,* 29 F.3d 255, 257-59 (6th Cir. 1994), however, it is plain that the Federal Arbitration Act does not give rise to federal jurisdiction. Similarly, the federal nature of the claims submitted to arbitration would not appear to be a sufficient basis for jurisdiction under 28 U.S.C. § 1331, since the rights asserted here are actually based on the contract to arbitrate rather than on the underlying substantive claims. *See In re Application of Prudential Sec. Inc.,* 795 F. Supp. 657, 658-59 (S.D.N.Y. 1992).

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Upon receiving the Funds' letter indicating an intent to challenge jurisdiction, this court requested the parties to submit letter briefs addressing the existence of federal question jurisdiction and any other potential bases for jurisdiction. PSI indicated that the requirements of diversity jurisdiction under 28 U.S.C. § 1332 are satisfied, because (1) the Funds are Michigan corporations with their principal places of business in Michigan, (2) PSI is a Delaware corporation with its principal place of business in New York, and (3) the amount of controversy greatly exceeds $50,000. At oral argument, the Funds admitted these jurisdictional facts but argued that diversity jurisdiction did not exist because of a failure on the part of PSI to exhaust administrative remedies.

The cases relied on by the Funds do not, however, apply. *Pennsylvania Railroad Co. v. Day,* 360 U.S. 548 (1959), and *Dones v. Eastern Air Lines, Inc.,* 408 F. Supp. 1044 (D.P.R. 1975), stand for the rule that a federal statutory scheme that creates a right of action and vests in an administrative agency exclusive jurisdiction over any claims operates as an implied partial repeal over more general grants of jurisdiction such as those based on diversity of federal question. In such a situation, failure to exhaust administrative remedies generally bars judicial review. *See* 360 U.S. at 552; 408 F. Supp. at 1048. Here, there is no such administrative scheme for processing arbitration claims. *New Era Life Ass'n v. Zangbell,* 266 Mich. 371, 254 N.W. 134 (1934), tells us only that, under Michigan law, fraternal organizations may require the exhaustion of internal appeals procedures before a claimant may go to court. *See id.* at 377, 254 N.W. at 136. The case before us has nothing to do with any fraternal organization.

Assuming, arguendo, that there is no basis for federal

question jurisdiction, and given the agreement by the parties that the elements of diversity jurisdiction are satisfied, the question becomes whether this court can uphold the district court's exercise of jurisdiction on a basis other than that recognized by the district court. Where there is a challenge on appeal to the subject matter jurisdiction of the district court, this court may take notice of other bases for jurisdiction. *See Eisler v. Stritzler*, 535 F.2d 148, 152 (1st Cir. 1976) ("Although we normally would be disinclined to note, sua sponte on appeal, alternative grounds for the district court's jurisdiction . . . , there is no impediment to our doing so . . . ."). Particularly where a plaintiff invokes the jurisdiction of the federal courts, loses in the district court, and then seeks to avoid the preclusive effects of that judgment by challenging on appeal the subject matter jurisdiction of the district court, it seems to us that a court of appeals should avoid dismissing the case for want of jurisdiction if a basis for federal jurisdiction appears in the record, including the appellate briefs and arguments of the parties.

Because the parties are of diverse citizenship and the requisite minimum amount is in controversy, the district court had jurisdiction under 28 U.S.C. § 1332.

III. Determination of Arbitrability

The focus of the Funds' argument in their brief is that the district court should not have decided whether the claims against PSI were eligible for arbitration. Instead, the Funds argue, the district court should have ordered PSI to submit the arbitrability issue to an arbitration panel. Whether the district court may decide the merits of a § 15 eligibility dispute before the arbitrators have had the opportunity to address the issue is a legal question we review de novo. *See Stevens v. McGinnis, Inc.*, 82 F.3d 1353, 1356 (6th Cir. 1996).

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This claim is controlled by *Litton Financial Printing Division v. NLRB*, 501 U.S. 190 (1991), where the Supreme Court pointed out that "[w]hether or not a company is bound to arbitrate, as well as what issues it must arbitrate, is a matter to be determined by the court, and a party cannot be forced to 'arbitrate the arbitrability question.' " *Id.* at 208 (quoting *AT&T Technologies, Inc. v. Communications Workers*, 475 U.S. 643, 651 (1986)). *See also Dean Witter Reynolds, Inc. v. McCoy*, 995 F.2d 649, 651 (6th Cir. 1993) ("[T]he question of arbitrability under NASD § 15 is not arbitrable . . . ."). While the Funds make much of PSI's supposed breach of the NASD rules in raising the arbitrability issue before the district court, it cannot be overlooked that the Funds initiated the district court proceedings by filing a petition to confirm a non-existent arbitration award premised on a non-existent default judgment. Even if the Funds had not been the ones to initiate this litigation, though, *Litton and Dean Witter* plainly demonstrate that PSI would be permitted to raise the arbitrability issue with the court without prior submission to arbitration.

The district court did not err in resolving the arbitrability issue.

IV. Susceptibility of § 15 to Tolling

The only argument the Funds make concerning the correctness of the district court's determination that the claims are not arbitrable is as follows: "[T]he entering of a plea of guilty on October 24, 1994 raises the fact question of whether [there] was active concealment of the fraud, thereby extending the eligibility period of claims to begin on that day." We need not reach the issue of whether § 15 is subject to tolling on the basis of fraudulent concealment, because the Funds did not

adequately plead fraudulent concealment before the district court. The guilty plea to which the Funds refer is irrelevant, since it involves investors and investments different from those at issue here. PSI's acknowledgment of wrongdoing with respect to transactions unrelated to the Funds or the Emited partnership in which they invested is wholly unrelated to this case.

V. Conclusion

The judgment of the district court is affirmed.

APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN DATED DECEMBER 23, 1994

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil Action No.
94-CV-71767-DT

HON. BERNARD A. FRIEDMAN

CITY OF DETROIT PENSION FUND, et al.,

Plaintiffs,

vs.

PRUDENTIAL SECURITIES, INC.,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter is presently before the court on the court's review of the parties' supplemental briefs addressing the issue of the tolling of the six-year eligibility period for arbitration as it relates to the allegation of fraudulent concealment. At a hearing on December 1, 1994, the court granted Defendant's motion to enjoin and dismiss arbitration claim and to dismiss petition for confirmation of award, subject to the parties' submission of briefs discussing this remaining issue, which the court now addresses.

Appendix B

Plaintiffs City of Detroit Pension Fund and City of Detroit Police and Firemen Pension Fund invested five million dollars in Prutech Project Development Partnership in October, 1985, and again in December, 1986, for a total of ten million dollars. The partnership interest was sold to Plaintiffs by Defendant Prudential Bache Securities, Inc., by its agent Harold Rossen.

Plaintiffs allege that Defendant, through Rossen, made misrepresentations to them about the annual return on their investment, the safety of their investment, sales commissions and fees, and failed to inform them of the high risk of the investment. On February 2, 1994, Plaintiffs submitted a Claim for Arbitration and a Uniform Submission Agreement, electing to arbitrate their dispute with Defendant, to the National Association of Securities Dealers (NASD), of which Defendant is a member. In their claim for Arbitration, Plaintiffs allege violations of Rule 405 of the New York Stock Exchange, Article 3, § 2 of the NASD Rules of Fair Practice, the Michigan Uniform Securities Act, M.C.L. § 451.810, and the fiduciary duty requirement of the Employee Retirement Income Securities Act (ERISA), 29 U.S.C. § 1001, *et seq.*

On April 28, 1994, Plaintiffs filed a Request for Default with the NASD, claiming that Defendant did not respond to its claim. On May 5, 1994, Plaintiffs filed a Petition for Confirmation of Award in federal court, requesting that the court confirm a judgment in the amount specified in the Claim for Arbitration, over $11 million. On June 3, 1994, Defendant filed a motion to enjoin and dismiss Plaintiffs' arbitration claim and to dismiss the petition for confirmation of award, which the court granted on December 1, 1994, subject to further review by the court of the issue of the tolling of the six-year arbitration eligibility period in relation to the allegation of fraudulent

concealment, in light of recent case law which the parties had not included in their initial briefs.

I. *Tolling the six-year eligibility period and fraudulent concealment*

> Rule 15 of the NASD Code of Arbitration Procedure states:
>
> No dispute, claim, or controversy shall be eligible for submission to arbitration under this Code *where (6) years have elapsed from the occurrence or event giving rise to the act or dispute, claim, or controversy.* This section shall not extend applicable statutes of limitations, nor shall it apply to any case which is directed to arbitration by a court of competent jurisdiction.

(emphasis added).

The parties dispute whether or not the six-year eligibility period is subject to tolling as a result of an allegation of fraudulent concealment. Although both the Third and Seventh Circuits have addressed this issue and have held that § 15 cannot be tolled (*see PaineWebber, Inc. v. Hofmann*, 984 F.2d 1372 (3d Cir. 1993), and *Edward G. Jones & Co. v. Sorrells*, 957 F.2d 509 (7th Cir. 1992)), there is no definitive statement on this point in either the Sixth Circuit or the Sixth Circuit district courts, which have issued conflicting rulings.

In arguing that fraudulent concealment can toll the six-year eligibility period, Plaintiffs rely on *Roney and Co. v. Kassab*,

981 F.2d 894, 900 (6th Cir. 1992) and *Dean Witter Reynolds, Inc. v. McCoy*, 995 F.2d 649, 651 (6th Cir. 1993). In *Roney*, the court did not explicitly state that fraudulent concealment exempts a claim from the six-year eligibility period. The court did, however, lay out the requirements for fraudulent concealment and then concluded that the appellees had not stated a sufficient claim for fraudulent concealment. *Roney*, 981 F.2d at 900.

The Sixth Circuit in *McCoy*, in remanding the case to the district court for a determination of which claims were eligible for arbitration, stated:

> . . . should the District Court find, applying the relevant State law, that Dean Witter or its agents succeeded in fraudulently concealing their alleged wrongs, then the claims potentially may still be pursued in arbitration. *See Roney*, 981 F.2d at 900.

McCoy, 995 F.2d at 651.

The district court, on remand, however, found that tolling of the eligibility period is not allowed based on fraudulent concealment. The court explained that the statement, *supra*, by the Sixth Circuit in *McCoy* "is dicta and is not consistent with the Sixth Circuit's holding in *Roney*." *Dean Witter Reynolds, Inc. v. McCoy*, 853 F. Supp 1023, 1029 (E.D. Tenn. 1994). The court stated that it "interprets *Roney* and *McCoy* to mean that it remains an open question in the Sixth Circuit whether Section 15 should be treated as a statute of limitations which is subject to equitable tolling on the ground of fraudulent concealment . . ." *Id.* The district court then held that "since Section 15 is an eligibility or jurisdictional requirement rather than a statute of

limitations, it is not subject to equitable tolling on the ground of fraudulent concealment." *Id.* at 1031. The court further stated:

> This Court is convinced that if the Sixth Circuit were confronted with this particular question of law, it would choose to follow the decisions of the Third and Seventh Circuits in *Hofman* and *Sorrells*, respectively. Such a result is entirely consistent with the Sixth Circuit's analysis and holding in *Roney*.

Id.

A few months later, the Eastern District of Michigan held otherwise, in *Davis v. Keyes*, No. 93-CV-73879 (E.D. Mich. August 1, 1994). In reliance on the Sixth Circuit cases of *McCoy* and *Roney*, the court held that the six-year eligibility period does operate as a statute of limitations which is subject to tolling in cases of fraudulent concealment. The court stated:

> Explicit in the court of appeal rulings and findings in *Roney* and *McCoy*, is the conclusion that the six-year eligibility period operates as a statute of repose. Implicit in the ruling is the conclusion that fraudulent concealment is a condition which tolls the six-year eligibility period. The instruction provided to the district court by the court of appeals in *McCoy* is both explicit and unambiguous. 995 F.2d at 651. If there is adequate proof of fraudulent concealment, defendants' claims more than six years old 'may still be pursued in arbitration.'

Id. at 6. Nevertheless, the court found that tolling was not warranted because defendants had not alleged facts which constitute fraudulent concealment. The court did not address the district court's decision in *McCoy* on remand, discussed *supra,* which held that tolling of the eligibility period is not allowed as a result of an allegation of fraudulent concealment.

Most recently, the Western District of Michigan addressed this same issue in *A.G. Edwards & Sons, Inc. v. Clark,* No. 1:94-CV-441 (W.D. Mich. Sept. 12, 1994). There, while the court recognized the conflict between the Sixth Circuit district courts in *McCoy* and *Keyes,* it found it unnecessary to decide between the two since the respondents' claims did not set forth facts supporting a tolling of the eligibility period.

In the instant case, it is similarly not necessary for the court to decide the tolling issue, as Plaintiffs have not plead sufficient facts to constitute a finding of fraudulent concealment. In all averments of fraud, the circumstances constituting fraud shall be stated with particularity. Fed. R. Civ. P. 9(b). The Sixth Circuit in *Roney and Co. v. Kassab,* 981 F.2d 894, 900 (6th Cir. 1992), outlined the requirements for fraudulent concealment: some affirmative fraudulent act and an additional act to perpetuate the concealment. Mere inaction or silence is not sufficient. *Id.*

As noted by Defendants, Plaintiffs did not allege fraudulent concealment in their NASD claim for arbitration. Defendant's supplemental brief, p. 6. In their response to Defendant's motion, Plaintiffs summarily claim that Defendant "fraudulently concealed the wrongs perpetrated on Plaintiffs by failing to properly inform them of the value of the limited partnerships, and in the event they did, they misstated the value of the investments, thereby bringing the claims within the eligibility

requirements for arbitration." Plaintiffs' Response to Defendant's motion, p. 6. However, Plaintiffs do not allege specific statements made or acts performed by Defendant which amount to fraudulent concealment.

Plaintiffs' supplemental brief is no more revealing. Plaintiffs explain that the First Quarter Report for the investment at issue, dated March 31, 1992, was an optimistic cover-up of the "sad state of affairs of the partnership," which were eventually revealed to Plaintiffs in a letter five months later, dated August 6, 1992. Plaintiffs' supplemental brief, pp. 1-2. The letter, written by Richard Moser, president of R & D Funding Corp., and not Defendant Prudential Securities, reveals that dividends and interest were not received from Prutech and that a market value of the partnership was unavailable. Plaintiffs' supplemental brief, Exhibit 2.

In reliance on a Wall Street Journal article, October 28, 1994, Plaintiffs state that Defendant admitted to criminal acts in the sale of limited partnerships on October 17, 1994. Plaintiffs' supplemental brief, Exhibit 4. Lastly, Plaintiffs claim that Defendant "made representations" to Plaintiffs as late as March 28, 1991, on the investments at issue, as evidenced by the Journal of Proceeding of the Board of Trustees of the Policemen & Firemen Retirement System. Plaintiffs' supplemental brief, Exhibit 5.

Plaintiffs' allegations are insufficient to constitute an affirmative fraudulent act and an additional act to perpetuate the concealment, as required by the Sixth Circuit in *Roney, supra.* First, both the First Quarter Report and the August letter were written by Prutech, the partnership in which Plaintiffs invested, not Defendant Prudential Securities. In any event, the report is

not necessarily "optimistic," as Plaintiffs contend. It revealed that the partnership's total assets were only a little more than $2 million dollars, while Plaintiffs had invested $10 million dollars in the partnership years earlier. The report clearly reveals, rather than conceals, that the partnership had lost a significant amount of money.

In addition, the report admonishes that the "operating results for the three months ended March 31, 1992 should not be considered indicative of the results expected for a full year." First Quarter Report, March 31, 1992, p. 8. The report states that the partnership will terminate on December 10, 1992, unless extended by a vote of the limited partners and warns that should the partnership terminate on that date, "it is uncertain whether investments in equity securities will be realized at the cost at which they are recorded." *Id.* Thus, the report appears to warn Plaintiffs that their investment is at risk, thereby frustrating Plaintiffs' claim of fraudulent concealment.

Second, that Defendant acknowledged criminal wrongdoing in another case by misleading investors on the risks and returns of partnerships, which invested in oil and gas properties, as reported in the Wall Street Journal, does not necessarily have a bearing on the partnership at issue. There is no evidence that Defendant committed the same illegal actions in the instant case as in the case discussed in the Wall Street Journal article.

Third, that Defendant "made representations" to Plaintiffs at board meetings is insufficient to constitute fraudulent concealment. Plaintiffs do not state what these "representations" were. The minutes of the meetings (Plaintiffs' supplemental brief, Exhibit 5) merely state that Hal Rossen and either an associate or Dick Moser appeared before the Board and

discussed Prutech on various occasions. The content of their statements are not provided.

Lastly, Defendant explains that by signing subscription documents at the time of purchase of their investment, Plaintiffs attested to their knowledge and awareness of the risks involved in their investment. Defendant's supplemental brief, p. 5. There is no evidence that Defendant concealed the risks of the investment.

The court additionally notes that Plaintiffs could likely have discovered Defendant's alleged misrepresentations, or concealment, within one year of the purchase of their investment, and in each subsequent year, when they did not receive the annual return on their investment, allegedly promised by Defendant.

II. *Fiduciary duty*

Plaintiffs contend that an affirmative duty to disclose arises where a fiduciary duty exists and that this is an exception to the rule that fraudulent concealment must be manifested by an affirmative act in order to postpone the running of the six-year eligibility period. *Brownell v. Garber,* 199 Mich. App. 519 (1993). Plaintiffs argue that such a fiduciary relationship between the parties existed here. Defendants dispute this.

Plaintiffs rely on *Zimmerman v. Merrill Lynch, Pierce, Fenner & Smith,* 151 Mich. App. 566 (1986), which held that a fiduciary relationship exists between a securities broker and the owners of its accounts. In *Zimmerman,* however, unlike the case at bar, the parties did not dispute that a fiduciary relationship existed. *Id.* at 572.

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It appears that a fiduciary relationship did not exist between the parties. Plaintiffs' account with Defendant appears to be non-discretionary, as Plaintiffs, a large, presumably sophisticated pension fund, made only two transactions, both of which were investments in the same partnership. A broker handling a non-discretionary account is not the fiduciary of his customer. *Leib v. Merrill Lynch, Pierce, Fenner & Smith,* 461 F. Supp. 951, 953 (E.D. Mich. 1978). Consequently, as Defendant did not have more than a limited duty toward Plaintiffs, the fiduciary duty exception to the requirement that an affirmative act of fraud be shown to toll the eligibility period is likely not applicable here.

For the foregoing reasons, it appears that Plaintiffs have not sufficiently plead fraudulent concealment. As a result, the court need not address whether or not an allegation of fraudulent concealment tolls the six-year eligibility period. Accordingly.

IT IS ORDERED that Defendant's motion to enjoin and dismiss arbitration claim and to dismiss petition for confirmation of award is granted.

s/ Bernard A. Friedman
BERNARD A. FRIEDMAN
UNITED STATES DISRICT JUDGE

Dated: Dec. 23, 1994
Detroit, Michigan